

HOUSE BILL No. 1045

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-22.

Synopsis: Review of contract savings. Requires that the state's procurement practices be supportive of the retention and creation of jobs in Indiana. Provides that a contract or solicitation for a contract for any of the functions performed by a governmental body's employees, if it would result in the layoff or dismissal of any employees, must: (1) require the offeror to provide verifiable evidence that the cost of the contract to the governmental body will be less than the cost of having the functions performed by the governmental body's employees; (2) specify that the governmental body may not pay the contractor more than the cost the governmental body determines the governmental body would incur to perform the functions using its employees; (3) require the governmental body to provide to an offeror an estimate of the cost of having the functions performed by the governmental body's employees; and (4) contain a statement that the governmental body may pursue certain remedies if the contractor fails to comply with the contract. Permits the governmental body's employees to submit an offer to perform the functions that would be provided under the proposed contract, and provides an absolute price preference for the employees if their offer is below the current cost of the function. Excludes from these requirements purchases from qualified nonprofit agencies for persons with severe disabilities.

Effective: July 1, 2007.

Dickinson

January 8, 2007, read first time and referred to Committee on Government and Regulatory Reform.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1045

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-22-3-6.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]: **Sec. 6.5. The state's procurement practices must be**
4 **supportive of retention and creation of jobs in Indiana.**

5 SECTION 2. IC 5-22-3-8 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2007]: **Sec. 8. (a) This section applies to a solicitation for a**
8 **contract that would require the contractor to perform any of a**
9 **governmental body's functions that are performed by the**
10 **governmental body's employees at the time of the solicitation.**

11 **(b) A representative of any group of the governmental body's**
12 **employees may, in response to a solicitation described in subsection**
13 **(a), submit an offer for the group of employees to perform the**
14 **functions that are the subject of the solicitation.**

15 SECTION 3. IC 5-22-5-9 IS ADDED TO THE INDIANA CODE
16 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2007]: **Sec. 9. (a) This section applies to a solicitation for a**



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contract that:

- (1) would require the contractor to perform any of a governmental body's functions that are performed by the governmental body's employees at the time of the solicitation; and
- (2) would result in the layoff or dismissal of any of the governmental body's employees.

This section does not apply to a purchase under IC 5-22-13.

(b) A solicitation described in subsection (a) must include the following:

(1) An estimate of the cost the governmental body would incur in performing the functions covered by the contract with the governmental body's employees during the period comprising the term of the proposed contract. The estimate must include:

- (A) labor;
- (B) overhead;
- (C) administrative costs;
- (D) equipment;
- (E) supplies; and
- (F) any other costs.

(2) A requirement that the offeror provide objective, verifiable evidence that:

- (A) is satisfactory to the governmental body; and
- (B) demonstrates that if the offeror is awarded the contract, the cost of the contract to the governmental body over the term of the contract will be less than the amount estimated under subdivision (1).

(3) A statement providing that the contract between the governmental body and the offeror, if it is entered into, must contain a provision prohibiting the governmental body from paying to the offeror, over the term of the contract, more than the amount described in subdivision (1).

(4) A statement providing that the contract between the governmental body and the offeror, if it is entered into, may provide for:

- (A) the deposit of surety bonds;
- (B) the making of good faith deposits;
- (C) liquidated damages;
- (D) the right of reversion or repurchase; or
- (E) other rights and remedies;

if the offeror fails to comply with the contract.

SECTION 4. IC 5-22-13-5 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) Supplies and services purchased under this chapter must:

- (1) meet the specifications and needs of the purchasing governmental body; and
- (2) be purchased at a fair market price.

(b) Supplies and services purchased under this chapter are not subject to IC 5-22-5-9.

SECTION 5. IC 5-22-15-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26. (a) As used in this section, "employee group" refers to a group of employees responding to a solicitation under IC 5-22-3-8.

(b) There is an absolute preference for an employee group that submits a bid that meets the requirements of IC 5-22-16-7(b).

SECTION 6. IC 5-22-16-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) This section applies to a solicitation for a contract that:

- (1) would require the contractor to perform any of a governmental body's functions that are performed by the governmental body's employees at the time of the solicitation; and
- (2) would result in the layoff or dismissal of any of the governmental body's employees.

This section does not apply to a purchase under IC 5-22-13.

(b) An offeror may not be considered responsive to a solicitation described in subsection (a) if the offeror does not provide objective, verifiable evidence that:

- (1) is satisfactory to the governmental body; and
- (2) demonstrates that, if the offeror is awarded the contract, the cost of the contract to the governmental body over the term of the contract will be less than the cost the governmental body estimates the governmental body would incur in performing the functions covered by the contract with the governmental body's employees during the period comprising the term of the proposed contract.

SECTION 7. IC 5-22-17-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 15. (a) This section applies to a contract that:

- (1) would require the contractor to perform any of a governmental body's functions that are performed by the governmental body's employees at the time of the solicitation

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1 for the contract; and
2 (2) would result in the layoff or dismissal of any of the
3 governmental body's employees.
4 **This section does not apply to a purchase under IC 5-22-13.**
5 (b) A contract referred to in subsection (a) must contain the
6 provision described in IC 5-22-5-9(b)(3).

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